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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 402/2009

Decision adopted by the Committee at its fifty-second session (28 April–23 May 2014)

Submitted by:	Nouar Abdelmalek (represented by Philip Grant of Track Impunity Always (TRIAL) – Swiss Association against Impunity)
Alleged victim:	Nouar Abdelmalek
State party:	Algeria
Date of complaint:	17 July 2009 (initial submission)
Date of previous decision:	18 November 2013 (admissibility)
Date of present decision:	23 May 2014
Subject matter:	Torture in detention for the purpose of obtaining confessions
Procedural issues:	None
Substantive issues:	Torture and cruel, inhuman or degrading treatment or punishment; obligation to systematically monitor interrogation rules and practices; obligation to conduct a prompt and impartial investigation; right to an effective remedy; right to compensation; prohibition against using confessions obtained under torture
Articles of the Covenant:	1, 2 (para. 1), 6, 7, 11, 12, 13, 14 and 15; and, alternatively, article 16

[Annex]

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-second session)

concerning

Communication No. 402/2009

Submitted by:	Nouar Abdelmalek (represented by Philip Grant of Track Impunity Always (TRIAL) – Swiss Association against Impunity)
Alleged victim:	Nouar Abdelmalek
State party:	Algeria
Date of complaint:	17 July 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 May 2014,

Having concluded its consideration of complaint No. 402/2009, submitted to the Committee against Torture on behalf of Mr. Nouar Abdelmalek under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant, Nouar Abdelmalek, is an Algerian citizen who was born on 18 July 1972. He states that he is the victim of a violation by Algeria of his rights under articles 1, 2 (para. 1), 6, 7, 11, 12, 13, 14 and 15, and, alternatively, article 16, of the Convention against Torture.[1] The complainant is represented by Philip Grant of TRIAL (Track Impunity Always) – Swiss Association against Impunity.

Facts as submitted by the complainant

Complainant's first and second arrests

2.1 The complainant entered the Algerian Army in the month of August 1991. In the context of widespread violence in Algeria during the 1990s, he refused, on a number of occasions, to participate in missions that troubled his conscience. In 1994, the complainant,

[1] Algeria ratified the Convention and made the declaration under article 22 on 12 September 1989.

then Chief of Service in the office of the Political Commissioner, did not want to participate in a mission, led by the counter-terrorism brigade, into villages in the Boumerdès region, because he was aware that citizens were abused and massacred during those missions. In order to avoid participating, he obtained a medical certificate. Nevertheless, by the time of his return on 7 May 1994, a wanted-person notice had been issued for desertion, and the complainant was placed in detention in the Reghaïa barracks. Though subsequently released by the prosecutor of the Blida military court on presentation of a copy of his medical certificate, he was given a suspended sentence of 3 months' imprisonment for desertion on 20 November 1994.

2.2 In May 1997, one night while on duty at the Reghaïa barracks, the complainant refused to take part in a torture session, and he left the barracks the next day. On the advice of an officer who was his friend, and who told him that matters had been taken care of, he returned to the barracks two days later. After resuming his post, he received a telephone call from his superior, a colonel, who told him that he was granting him leave. He then left the barracks and went to stay with his family in Tébessa. Having returned from his leave on the evening of 31 May, he was arrested the next day by military officers and detained in the Blida military prison. He was prosecuted for disobedience, for writing newspaper articles without authorization, and for desertion. Only the last of these charges was upheld by the Blida military court, which sentenced him to 2 months' imprisonment on 23 June 1997. Since the suspension granted in 1994 had been revoked, the complainant spent 5 months in detention and was not released until 31 October 1997. The complainant then resumed his post as Chief of Service in the office of the Political Commissioner at the Reghaïa barracks.

2.3 In 1998, in the course of his duties, the complainant drafted a report requested by the Ministry of Defence on, among other things, the recruitment of young Islamists in Afghanistan, and in which he implicated the Minister for Small and Medium-Sized Enterprises and future Chief of the MSP (Movement for a Society of Peace or HMS (*Harakat Mujtama` al-Silm*)) Islamic Party, Bouguerra Soltani. As a result of this report, the complainant was placed on "convalescent leave" for "administrative reasons" for three times 29 days, and then on "indefinite leave", until further notice. He was unable to obtain an explanation from the personnel office of the Ministry. His pay was stopped in 1999, and he learned that he was considered to be a deserter. During the period of "indefinite leave", the complainant wrote articles for various Algerian newspapers, under pseudonyms when they were of a political nature.

The complainant's third arrest

2.4 Since he could no longer work with the Army or write freely, and fearing for his safety, the complainant decided to leave Algeria, and acquired false identity papers. On 12 April 2001, as he was attempting to leave the country by crossing the border between Algeria and Tunisia, he was arrested by the border police at the Bouchebka border post. He was then turned over to the police at the Tébessa *wilaya* (prefecture) where he was questioned and then transferred to the Intelligence and Security Department (DRS) of the Tébessa *wilaya*, where he was questioned again. The next day, the complainant was handed over to the DRS eastern region services, and then taken in a car, hooded, handcuffed, and unable to see the faces of his escort, from Tébessa to Constantine. On arrival, he was placed in a cell alone.[2] He was then subjected to acts of torture, including the "rag technique" (forcing the victim to swallow a very large quantity of dirty water to the point of suffocation), beatings, electric shocks to sensitive parts of his body, and suspension by his

[2] The complainant does not name the place of detention where he was allegedly tortured, although it can be deduced from his testimony that he was detained in the DRS centre in Constantine.

left foot for many hours on end. His right foot was pierced with a heavy-gauge nail or screwdriver and shards of glass. While he was hanging from the ceiling by his foot, cold water was poured over his body. The victim was blindfolded for all the time that these abuses were being inflicted. During the interrogations, he understood that his torturers did not only wish him to reveal who had provided him with false papers; they also feared that the complainant would make public, once he had abandoned Algerian territory, what he had seen in the Army. The torture consisting in hanging the victim by his foot was repeated for 15 days in a row. During the days following his transfer to Constantine, the torturers submerged his head in water to the point of asphyxiation and bent his leg violently, causing breaks requiring a plaster cast, which was put on by a doctor who was called in for that purpose. The complainant was also deprived of sleep.

2.5 During his 15 days in secret detention (from 13 to 27 April 2001), between torture sessions the complainant was held in a cell approximately 1 square metre in area and approximately 1.2 metres high, situated near the torture chamber, without a window, and lit day and night by a fluorescent tube. He could not lie down full length or stand up; he was naked, handcuffed with his hands behind his back day and night, and he slept on the floor. He was given water and a piece of bread twice daily, and his handcuffs were not removed to allow him to eat. He only asked to leave his cell once a day, in order to avoid the blows and insults, and was forbidden to look at his jailers (he was told to look at the wall) when they opened the door. At night, since the doors on to the corridors (behind his cell door) were kept closed, there was no ventilation and he lacked sufficient air. On 27 April 2001, he was transferred back to Tébessa and turned over to the police, who took him directly to the Tébessa hospital, where he was placed in the wing reserved for prisoners. A prosecutor from the court of Tébessa paid him a visit several days after his arrival in the hospital. The complainant informed him of the torture inflicted on him, but the prosecutor was not particularly interested. The meeting was brief.

2.6 In late May 2001, he was transferred to the Tébessa prison infirmary, and in late June of that year, placed in regular detention, sharing a cell with other prisoners. Between the visit from the Tébessa prosecutor in the hospital and his placement in regular detention, the complainant wrote twice to the prosecutor general of Tébessa to complain about the torture inflicted on him, with no result.

2.7 In early July 2001, the complainant began a hunger strike, which lasted seven days, and which resulted in his placement in solitary confinement and led the prosecutor general to bring the case before an investigating judge at the court of Tébessa. This judge came to see the complainant, informing him that the allegations he had made were related to a matter of military security and therefore not within his jurisdiction. No further action was taken. The complainant wrote again to the prosecutor general of Tébessa, but the wardens told him that his letters were thrown away.

2.8 On 4 August 2001, during his trial for forgery, using forged documents and impersonation, the complainant again reported the torture inflicted on him, showed the marks on his body, and demanded an investigation. The court simply sentenced him to 1 year's imprisonment. The judge advised the complainant that the matter of torture required another proceeding, since the only matter before the court was forgery. The complainant again reported the acts of torture inflicted on him — again without result — before the appeal court during his hearing on 15 October 2001 (when his prison term was reduced to 10 months).

2.9 He was not released until 28 April 2002. He then went to the prosecutor general of Tébessa and asked for an investigation to be launched into the acts of torture inflicted on him. The prosecutor general told the complainant that he would be summoned; this never occurred. The next day he was threatened by two DRS officials, who told him that he would put himself and his family in grave danger if he persisted.

The complainant's fourth arrest and detention

2.10 At around 5 a.m. on 29 June 2005, officers from the Beni Messous brigade of the National Gendarmerie (Al Dark al-Watani), accompanied by plainclothes officers, cordoned off the complainant's home in Staoueli and searched it. Woken by a gun to his head, the complainant was taken to the headquarters of the Beni Messous gendarmerie, where he was tortured for two days. Naked, he was placed alternately in a cell in which the heat was on full, for two or three hours, and then in a cell where the air conditioning was on full, for the same length of time. He was kicked, and beaten with a metal bar, a pipe, and an electric cable. During those two days, he was deprived of sleep and sprayed with cold water to keep him awake. He was also subjected to the rag torture and electric shocks to his genitals and had a bar inserted into his anus. Once, he was taken to the toilets where he was forced to swallow toilet water. All the while he was undergoing these abuses, he was subjected to insults and threats (in particular, the threat of rape if he refused to sign confessions), and sexual references to his sister. The complainant recognized the person directing the torture sessions as a brigade commander, and family friend of the Minister of State, Bouguerra Soltani. The complainant was accused of plotting against the Minister, of having planted drugs that had been found in the Minister's armoured vehicle, and of ties to terrorism.

2.11 On the morning of 1 July 2005, DRS officials took the complainant to an unknown locale near the Chateauneuf Centre, the DRS headquarters and notorious as the biggest centre for torture and arbitrary detention in the country. The complainant was first taken to an underground cell. He was hung head down by his left foot, from a rope fastened to the ceiling, with his hands tied behind his back and a hood over his head. He was subjected to the rag technique, and electric shocks to his stomach and genitals. He was then tied to a bed, and dealt many blows to his spinal cord with the heel of an Army boot. The complainant was then taken to a larger cell where he was again tortured in the presence of senior Algerian officials, including Bouguerra Soltani, then Minister of State, and Colonel Ali Tounsi, then Director of National Security, who were egging the torturers on. The purpose was to extort from him the identity of detractors of the Minister of Small and Medium-Sized Enterprises within the Minister's own party and, under duress, the complainant cited names and signed confessions without knowing the contents of the documents presented to him. The Minister of State left with the documents signed by the complainant, telling him that he would never leave prison for the rest of his life. At the end of the day, the complainant was taken back to the Beni Messous gendarmerie, where he was again tortured for two days. The complainant signed more documents under duress, including blank police reports.

2.12 Having learned of his arrest, the complainant's cousin went to the Beni Messous gendarmerie on 1 July 2005. He too was arrested and tortured to make him testify against the complainant, and thrown into a cell in the gendarmerie. They were both brought before the court of Bir Mourad Raïs, in the suburbs of Algiers, on 4 July 2005. Having first been taken to a Government hospital for a medical check-up, the complainant had told the doctor about the torture inflicted on him and shown him the marks. The doctor had assured him that he would mention it, but the certificate drawn up later said nothing about torture. At the courthouse before the hearing, the complainant was beaten by a warrant officer and his staff. His head was thrown against a fire extinguisher, causing head wounds and bleeding, which were visible when he appeared before the court. The magistrate of the fifth chamber refused, however, to mention torture in the record and stuck to the gendarmes' version, which said that he had inflicted the head wounds on himself, voluntarily. The complainant was charged with terrorism and sent to El Harrach prison.

2.13 When he gave information about conditions in El Harrach prison to a journalist by cell phone, and it was reported in the press, the complainant was called to the prison

infirmary on the evening of 12 October 2005, where he was awaited by five people calling themselves members of DRS. Questioned about the news leak, the complainant was again violently tortured, being subjected in particular to electric shock sessions, and then spent seven months in solitary confinement, forbidden to speak to anyone, in a 3 square metre cell with no window and lit by a bright fluorescent light day and night; and underfed. Despite many letters of protest to the prison warden and the Minister of Justice, it was not until May 2006 that he was moved to another cell, still in the solitary confinement wing but where there were other prisoners.

2.14 On 23 October 2005, the complainant was taken from his cell by three DRS officials and thrown into a car. His hands were tied behind his back and his face was covered once they were out of the prison gate. The complainant was driven to a secret detention centre, where he was stripped and placed naked in a cell, beaten with a heavy electrical cord, and slapped and insulted. The officers who subjected him to this treatment wanted him to inform them of the activities of the Islamic prisoners. When he refused, they hung him for hours from a ladder affixed to the wall. The complainant spent one day in this secret detention centre. He heard the cries of many people, who were probably, like him, victims of torture.

2.15 After 10 months of investigation, the complainant's trial was set for 10 May 2006, then adjourned to 24 May 2006, then to 7 and 21 June 2006. At each new hearing, there was a new judge, for unknown reasons. The complainant systematically reported the acts of torture to each trial judge, and each one replied either that torture did not exist in Algeria, or that the matter of torture could not be considered and must be taken up in another proceeding. The complainant was sentenced to 1 year in prison.

2.16 After his release from prison on 4 July 2006, the complainant was under constant surveillance by DRS, and received anonymous telephone calls telling him to "keep quiet" if he did not wish to spend his life in prison. In October 2006, the complainant published an interview on the Internet with a Tunisian journal describing the acts of torture inflicted on him, and implicating the Minister for Small and Medium-Sized Enterprises. After more threatening phone calls, he decided to leave Algeria. He managed to reach Tunisia using false papers, and then went to France, where, on 26 December 2006, he submitted an application for refugee status, which was granted to him on 31 March 2008. His family, which had remained in Algeria and had often received threatening phone calls during his detention in 2005, is still under surveillance. The acts of torture inflicted on the complainant have severely impaired his health, including an almost totally, and irreversibly, disabled left leg, a damaged spinal column, and pains in his kidneys and sides, from the beatings he received. In addition to the overall deterioration in his physical condition, the complainant suffers from violent headaches, nightmares, and recurrent insomnia.

The complaint

3.1 The complainant states that he is a victim of treatment that constitutes acts of torture within the meaning of article 1 of the Convention, having been subjected to severe pain and suffering (see the acts of torture described in the facts section), as attested by medical certificates drawn up in France, dated 6 March 2007 and 28 August 2008.[3] His suffering is such that in France he was granted disabled worker status with a 50 per cent work disablement.[4] Moreover, during the 15 days in which he was secretly detained in April

[3] The medical certificates are annexed to the complaint.

[4] A medical certificate dated 26 May 2008 was prepared at the request of the complainant, in support of his application to be recognized as a disabled worker in France; see annex 25 of the initial communication.

2001, he was subject to conditions of detention that, he argues, in themselves constitute a form of torture. The intent of the torturers was to subject the complainant to severe suffering for the purpose of obtaining information or confessions, and punishing, intimidating or coercing him for his supposed political affiliations. It is also incontrovertible that his sufferings were inflicted by public officials. The perpetrators of these acts were, in fact, members of the National Gendarmerie and DRS, acting in an official capacity. A minister of the Government of the Republic personally supervised one of his torture sessions and encouraged it. These acts were orchestrated by a number of public authorities (security, military, prison, judiciary and executive).

3.2 The complainant also claims to be the victim of violations of article 2 (para. 1), and of articles 6, 7, 11, 12, 13, 14 and 15, read in conjunction with article 1.

3.3 With regard to article 2, paragraph 1, the complainant alleges that the State party has not taken the necessary steps to prevent torture. To begin with, it is clear that the State party continues to fail in its duty to seriously investigate or prosecute the great majority of serious crimes, including crimes of torture perpetrated since 1992. Moreover, order No. 06-01 implementing the Charter for Peace and National Reconciliation, an order which prohibits accusations against members of the Algerian security forces for serious crimes committed during the period known as the "national tragedy", sets out heavy prison sentences for anyone who makes such accusations. Although that order pertains only to acts committed during the national tragedy, it has effects beyond that period, since it sends a clear message concerning the institutional impunity of the security forces. Furthermore, Algerian law contains no provisions that prohibit using confessions or statements extorted under torture as evidence, and therefore the security forces are not deterred from using those methods. Article 51 of the Algerian Code of Criminal Procedure also provides that a person may be legally held in custody for a period of 12 days incommunicado, without contact with the family, a lawyer or an independent doctor.[5] The complainant therefore considers that the State party continues to fail to take the necessary measures to prevent such violations as torture, of which he has been a victim.

3.4 The complainant argues that the State party continues to violate article 11 of the Convention, by providing no supervision over pretrial detention or over the interrogations to which detainees are subjected. Although under the law police custody is limited to a period of 12 days, in practice that period is extended. The right to the assistance of counsel during detention is not guaranteed under Algerian law. The complainant also challenges the exclusive power of DRS, the authority in charge of a number of temporary holding places lacking effective supervision, which leads to abuses such as the ones he experienced. He also objects to the lack of a national registry of detained persons in Algeria. The complainant notes that, on one occasion, he was severely beaten just prior to appearing before the judge, who registered no reaction whatever, which demonstrates that the system for review is ineffective, in violation of article 11 of the Convention.

3.5 The complainant also considers that the State party has violated article 12, read in conjunction with article 6 (para. 2) and article 7 (para. 1) of the Convention. Despite repeated complaints by the complainant about the acts of torture inflicted on him, the State party has not held a prompt and impartial investigation some eight years after the incidents described.[6] Although the alleged perpetrators of these acts of torture were in its territory,

[5] The complainant invokes a report of the Collective of Families of the Disappeared in Algeria, "Alternative Report to the Human Rights Committee" (pp. 31–33), and an Amnesty International report, "Algeria: Briefing to the Committee against Torture", 17 April 2008, Index AI, MDE 28/001/2008.

[6] More than 12 years, at the time of the Committee's examination of the complaint.

the State party did not promptly carry out a preliminary investigation, making it impossible to prosecute the persons implicated, in violation of article 12 read in conjunction with articles 6 and 7 of the Convention.

3.6 The State party has not given the complainant the least possibility of a prompt and impartial consideration of the alleged facts, thus contravening article 13 of the Convention. The complainant recalls that, in accordance with the Committee's jurisprudence, the State party is under the obligation to carry out an investigation, regardless of whether a formal complaint for acts of torture was lodged.[7]

3.7 The inaction of the public prosecutor's office in fact precludes any possibility of bringing a civil suit for damages because, pursuant to the Algerian Code of Criminal Procedure, a judgement in a civil proceeding is stayed for as long as ongoing criminal proceedings have not concluded. If it can be said that the criminal action was initiated in 2001, when, on the basis of the complainant's report, the prosecutor general of Tébessa referred his case to the investigating judge, in practice the complainant is denied any possible compensation, in violation of the terms of article 14 of the Convention. Moreover, article 15 of the Code of Civil Procedure requires, for the filing of a civil complaint, a set of conditions such as the name and address of those responsible for the abuses, which the complainant does not know. He considers that these obstacles also constitute a violation of article 14 of the Convention.

3.8 Despite the complainant's repeated complaints that acts of torture were inflicted on him, in particular at his hearing before the investigating judge on 4 July 2005, the statements and confessions obtained under torture remained in the complainant's case file and served as the basis for his conviction, in violation of article 15 of the Convention.

3.9 In the event that the Committee does not find a violation of article 1 of the Convention, the complainant considers that the treatment inflicted on him falls at the very least within the scope of article 16 of the Convention, and that therefore the Committee should find a violation of this provision alone as well as a violation of the aforementioned provisions read in conjunction with article 16 of the Convention.

3.10 As for domestic remedies, the complainant has systematically, and on every occasion, denounced these acts of torture before the competent Algerian authorities. In April 2001, he complained to the prosecutor of the Tébessa court, and then to the prosecutor general, the investigating judge, and the Tébessa court, both during the hearing in first instance and on appeal. He also denounced these acts of torture in June and July 2005 during his appearance before the investigating judge of the court of Bir Mourad Raïs on 4 July 2005, and then at every substantive hearing before that court. Complaints about these acts of torture have been lodged with seven judicial authorities in all, without result.

3.11 The complainant also invokes the lack of independence of the competent judicial authorities, which makes remedies ineffective, with no real prospects of success. In accordance with the Committee's jurisprudence, the complainant is not required to exhaust remedies that are unlikely to be effective. He also cites risks to his life and safety, and mentions the legal impossibility of bringing judicial proceedings following the adoption of order No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation, which prohibits any proceedings against Government officials for acts committed during the "national tragedy".

[7] The complainant refers to communication No. 6/1990, *Parot v. Spain*, decision adopted on 2 May 1995, para. 10.4, and communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.6.

State party's observations on admissibility

4. On 1 December 2009, the State party contested the admissibility of the complaint, on the grounds that it did not meet the conditions laid down by the Committee's rules of procedure concerning the procedure for complaints. The State party gave no additional explanation as to the basis on which it was contesting the admissibility of the complaint.

Additional information from the complainant

5.1 On 3 March 2010, the complainant observed that the State party had not substantiated its request that the Committee should find the complaint inadmissible. He therefore asked the Committee not to grant the State party's request and to pronounce on the admissibility of the communication as well as on its merits.

5.2 On 15 December 2010, the complainant informed the Committee that he wished to withdraw his complaint against the State party.

5.3 On 4 March 2011, the complainant's counsel noted that on the same day that the complainant informed him of his wish to withdraw his complaint, which was 15 December 2010, a representative of the Permanent Mission of Algeria to the United Nations Office in Geneva contacted the Committee secretariat for confirmation that the complainant had done so. Counsel indicated that the complainant had several reasons for withdrawing his complaint. Firstly, he had been pressured by members of his family who did not wish him to take action against the State party. The withdrawal of the request was also a response to the persistent demand of his father, who said it was an affront to the dignity of his country. Secondly, he had been pressured and threatened by Algerian opposition organizations and movements that had hacked into and were monitoring his electronic mail and his website.[8] Thirdly, the complainant had been the target of death threats but had not been able to determine who they had come from. On 8 November and 8 December 2010, the complainant informed the Toulouse police that he had received death threats by electronic mail via his website.

5.4 Although he expressed the desire to withdraw his complaint to the Committee, he also expressed a wish to proceed with his criminal complaint against the former Minister of State, Bouguerra Soltani, whom he accuses of having tortured him, and against whom he lodged a criminal complaint before the Swiss courts in October 2009, in application of the principle of universal jurisdiction.[9] The Minister managed to flee before the police of the canton of Fribourg could arrange for a confrontation with the complainant.

5.5 Counsel informed the Committee that he had received an unsigned letter from the complainant, dated 21 October 2010, in which he mentioned his wish to withdraw his complaint because negotiations with the Algerian authorities had brought about the restoration of his moral and material rights, and the complaint was thus no longer necessary. Since it was not signed, counsel contacted the complainant, who denied having sent the letter.

5.6 On 31 March 2011, counsel informed the Committee that the complainant had decided to proceed with his case before it.[10] The complainant explained that his initial request to withdraw the complaint had arisen from problems with the Algerian judiciary, which had required proof of his wish to withdraw his complaint to the Committee before it could investigate a complaint against those involved in torturing him. After the withdrawal

[8] www.anouarmalek.com.

[9] The complainant had filed the complaint in Switzerland, because the Minister was then on Swiss territory.

[10] Counsel provided a letter dated 8 March 2011 and signed by the complainant to this effect.

of the complaint had been requested, an Algerian lawyer was engaged to defend the complainant's interests before the Algerian courts. This lawyer was served a notification of the decision by the investigating judge,[11] who rejected his petition without explanation. Under the circumstances, the complainant wished the Committee to examine his complaint against Algeria.

Additional information from the State party

6.1 By note verbale of 31 March 2011, the State party said that it was surprised at how the complainant's counsel was attempting to distort the information that had been communicated to him, in good faith, by the Committee secretariat regarding its contacts with the Permanent Mission of Algeria to the United Nations Office in Geneva. The State party categorically rejects those assertions, explaining that the Permanent Mission of Algeria had merely made contact with the Committee secretariat to verify information relayed to it on 17 December 2010 via the national electronic media, indicating that the complainant had withdrawn his complaint to the Committee on 15 December 2010. The State party notes that the Committee confirmed, on 17 December 2010, that it had received a request from the complainant to withdraw his complaint.

6.2 The State party adds that when it was informed about this letter, the Permanent Mission of Algeria requested a copy for the case file on this complaint and asked the usual questions about the next stage of the procedure. In reply, the Committee indicated that a copy would be forwarded after the usual consultations with the complainant's counsel. The Committee also informed the Permanent Mission of Algeria that the withdrawal of the complaint would not take effect until after the Committee had taken a formal decision to strike the case from the roster during its May 2011 session. On 10 January 2011, the Committee informed the Permanent Mission of Algeria that the complainant's counsel had not been informed of the request, and that it would therefore be necessary to consult him before confirming that the complaint had been withdrawn, and thus also before forwarding the complainant's letter dated 15 December 2010. The State party notes that a copy of the letter has still not been sent. The State party insists that the Committee should verify the sequence of events, and that the complainant's counsel should not question its good faith, or that of its diplomatic representatives, in this matter.[12]

6.3 By note verbale of 22 October 2013, the State party informed the Committee that its observations would be submitted as soon as they were complete. The Committee had planned to consider the complainant's case in the absence of observations from the State party at its fifty-first session, which took place from 28 October to 22 November 2013. In view of the note verbale of 22 October 2013 from the State party, the Committee decided to consider, at its fifty-first session, only the admissibility of the communication.

State party's submission on the merits

7.1 On 21 March 2014, the State party submitted its observations on the merits of the communication. It recalled that the complainant is an ex-serviceman who was demobilized on 16 October 1998 after a lengthy period of desertion. He had then found himself embroiled in legal proceedings and a warrant for his arrest for theft, forgery, using forged documents and fraud was issued by the El Harrach court on 13 February 1999. On 2 September 2000 he was sentenced in absentia to 2 years in prison for these offences. On 2 December 2000 another warrant for his arrest was issued for writing bad cheques.

[11] The complainant does not identify the investigating judge, the court or the district involved.

[12] The complainant's letter dated 15 December 2010, and duly verified, was forwarded to the State party on 11 April 2011.

7.2. The State party claims that, on 30 June 2005, the complainant was arrested again for alleged involvement in a case of possession of drugs and fraud. In his statement he admitted placing drugs in a car that did not belong to him but in which he was a passenger; the drugs were found by the gendarmes on 21 May 2005. Evidence of his involvement in fraud offences was discovered in a search of his house. Proceedings were then taken against the complainant by the Bir Mourad Raïs prosecutor's office for fraud, false reporting of a crime and possession of drugs. On 21 June 2006 the Bir Mourad Raïs court acquitted him of the charges of false reporting of a crime and possession of drugs but found him guilty of fraud and sentenced him to one year's imprisonment. The sentence was upheld by the criminal division of the Algiers Court on 12 February 2007.

7.3. On 16 May 2010 the complainant filed a suit for damages with the chief investigating judge at the Bir Mourad Raïs court, against Bouguerra Soltani, the brother of the owner of the car where the drugs were found, who had implicated the complainant because of a dispute over a property sale. The complainant accused Bouguerra Soltani of abuse of power and using the apparatus of State for personal ends, to extract a confession from the complainant by torture, on the basis of which he was convicted. On 2 September 2010, the investigating judge rejected the suit on the grounds of non-payment of the surety required under the Code of Criminal Procedure when bringing suit for damages.

7.4. In the State party's view, the complainant is implicated in numerous crimes and he is alleging torture in order to cover himself and avoid responsibility for the criminal acts he has been involved in. The State party argues that the communication is based on allegations with no basis in law.

Additional information from the complainant

8.1. On 22 April 2014 the complainant submitted comments on the State party's observations on the merits. He notes that the State party took a very long time to inform the Committee of the order of 2 September 2010 dismissing his complaint of torture. He notes that the failure to pay surety on bringing the action for damages in no way justifies the failure to investigate matters of such gravity. The facts had been brought to the attention of the State party authorities, who should have launched an effective and impartial enquiry ex officio.

8.2. The complainant notes that the State party's reference to the proceedings against him has no bearing on the consideration of this communication, which concerns the torture he was subjected to in April 2001 and June 2005 and his various unlawful detentions. He also states that the State party simply denies that torture took place and gives no explanation in response to his allegations of torture, which he has substantiated in great detail in the communication.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 On 18 November 2013, at its fifty-first session, the Committee considered the admissibility of the complaint under article 22 of the Convention. It ascertained that the same matter had not been and was not being examined under another procedure of international investigation or settlement.

9.2 The State party argues that the complainant has withdrawn his complaint and that, contrary to counsel's assertions, it has in good faith attempted to establish whether he wished to proceed with it before the Committee. The Committee notes that, after having expressed a desire to withdraw his complaint against the State party on 15 December 2010, the complainant sent another letter to the Committee dated and signed 31 March 2011,

confirming that he wished to proceed with his complaint before the Committee. The Committee notes that the authenticity of the letter of 31 March 2011 has at no time been contested by the State party. The Committee therefore considers that the communication is admissible under article 22, paragraph 1, of the Convention.

9.3 The Committee could not help but take note of the mysterious circumstances surrounding the complainant's requests to withdraw his complaint, and the contradictory reasons given by the complainant and his counsel to explain those requests, followed by his request to resume the procedure. It notes the State party's lack of cooperation regarding the submission of observations on the admissibility and merits of the case, despite the Committee's five reminders of 22 January 2010, 11 April 2011, 17 November 2011, 6 December 2012 and 26 July 2013. The Committee reaffirms that, within the framework of the procedure for individual communications set out in article 22, the State party is called on to cooperate with the Committee in all good faith and must refrain from taking any action that might constitute a hindrance. The Committee wishes to remind the State party of its obligations under article 22, and regrets that its correspondence has so far been limited to requests for confirmation as to whether the complainant has withdrawn his complaint, and that no comments have been submitted on the admissibility or merits of the case, which has hitherto prevented the Committee from elucidating the violations allegedly suffered by the complainant.

9.4 Although the State party has contested the admissibility of the complaint, it has provided no relevant information or explanation. The Committee has found no impediment to the admissibility of the complaint, and therefore declares it admissible. Accordingly, it requested that the State party submit its observations on the merits of the communication no later than 31 December 2013.

Lack of cooperation by the State party

10. On 6 October 2009, 22 January 2010, 11 April 2011, 17 November 2011, 6 December 2012, 26 July 2013 and 18 November 2013, the State party was asked to submit its observations on the admissibility and merits of the communication. In its note verbale of 22 October 2013, the State party announced that it would submit its observations once they had been finalized. Having found the complaint admissible on 18 November 2013, the Committee asked the State party to submit its comments no later than 31 December 2013. However, the State party's observations on the merits were not received until 21 March 2014. The Committee regrets that the State party has provided no information of substance on the admissibility of the complaint, merely disputing admissibility in a note verbale on 1 December 2009, and that it has made no substantive comments on the merits of the complainant's claims, saying only that he has been embroiled in legal problems. It recalls that the State party is obliged, under article 22 of the Convention, to submit to the Committee, in writing, explanations or statements clarifying the matter and to describe any remedies it may have taken. In the absence of a response from the State party, the Committee must give due weight to the complainant's claims that are sufficiently substantiated.[13]

Consideration of the merits

11.1 The Committee has considered the complaint in light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention. Since the State party has offered no substantive observations on the merits, due weight must be given to the complainant's claims.

[13] See communication No. 376/2009, *Bendib v. Algeria*, 8 November 2013.

11.2 The Committee takes note of the complainant's claim that, during his periods of detention between 2001 and 2005, he was beaten repeatedly, subjected to the rag technique, given electric shocks, hung from the ceiling by his left foot, had his leg violently twisted until it broke, had his right foot pierced through, and had a bar inserted in his anus. It also takes note of the complainant's claim that he was held in secret detention for 15 days in April 2001, and on 1 July and 23 October 2005 in DRS centres; that, during his periods in detention, he was subjected to further ill-treatment and humiliation, and was beaten before his hearing on 4 July 2005; that he received no adequate medical treatment; and that, during all those years in detention, he was underfed, held in windowless cells and slept naked and handcuffed on the floor, unable to lie down full length.. The Committee notes that these claims are substantiated in medical certificates issued in France, dated 6 March 2007 and 28 August 2008. The Committee concludes that the alle[illegible] treatment constitutes severe pain and suffering within the meaning of article 1 of the Convention.

11.3 The Committee takes note of the complainant's claim that his severe pain and suffering was inflicted by public officials, in this case, DRS officials and gendarmes, with the consent of high-ranking officials and the acquiescence of the judicial authorities. The Committee also notes that such treatment was inflicted for the purpose of obtaining statements and confessions from the complainant, and of punishing, intimidating and coercing him on the basis of his presumed political affiliation. The Committee notes that the State party has not refuted these allegations. The Committee considers that the acts described constitute torture within the meaning of article 1 of the Convention. The Committee also considers that the complainant's secret detention, and the humiliation and inhumane conditions of detention that accompanied the acts of torture inflicted on him, also constitute a violation of article 1 of the Convention.

11.4 Having found a violation of article 1, the Committee will not consider separately the claims of a violation of article 16 of the Convention.

11.5 The complainant claims a violation of article 2, paragraph 1, read in conjunction with article 1, inasmuch as the State party failed in its obligations to prevent and punish the acts of torture inflicted on the victim. The Committee takes note of the complainant's arguments that he has been a direct victim of flaws in law and in practice related to interrogations in Algeria, in particular that the law permits police custody for 12 days, with no contact with the outside, and in particular with the family, and no assistance from a lawyer or independent doctor; and that custody can be extended beyond that limit. The Committee also takes note of the complainant's claim that he was held in DRS premises not subject to any form of supervision by the competent judicial authorities. The Committee notes that the State party has not contested these claims. In this regard, the Committee recalls its most recent concluding observations addressed to the State party, in which it noted with concern that the legal period of custody can in practice be extended repeatedly, that the law does not guarantee the right to counsel while in custody, and that, in practice, the right of a detained person to have access to a doctor and to communicate with his or her family is not always respected.[14] In the light of the information before it, the Committee finds a violation of article 2, paragraph 1, read in conjunction with article 1 of the Convention.

11.6 Regarding article 11, the Committee takes note of the complainant's argument that he benefited from no legal safeguards during his interrogation. The Committee recalls that, in its recent concluding observations, it recommended that the State party establish a

[14] Concluding observations of the Committee against Torture on the third periodic report of Algeria, adopted on 13 May 2008 (CAT/C/DZA/CO/3), para. 5.

national registry of detained persons.[15] In view of the lack of information provided by the State party on these matters or on the arguments set out in its concluding observations, the Committee can only find that the State party has breached its obligations under article 11 of the Convention.

11.7 Regarding the alleged violation of article 12, read in conjunction with articles 6 and 7, and of article 13, of the Convention, the Committee takes note of the complainant's claim that, despite repeated complaints to the various judicial authorities, the State party has not conducted a prompt and impartial investigation more than 12 years after the events described. The Committee notes that the State party has not contested this allegation. The Committee recalls the obligation to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.[16] In the absence of an explanation by the State party as to the reasons for the failure, more than a decade after the events, to conduct any investigation whatever into the acts of torture during various periods of detention, denounced on many occasions by the complainant, the Committee finds a violation of article 12 read alone and read in conjunction with articles 6 and 7 of the Convention. The Committee also considers that the State party has failed to fulfil its obligation under article 13 of the Convention to ensure the complainant's right to complain and to have his or her case promptly and impartially examined by the competent authorities.

11.8 Regarding the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the State party has deprived him of any form of redress by failing to act on his complaint and by not immediately launching a public investigation. The Committee recalls that article 14 of the Convention recognizes not only the right to fair and adequate compensation, but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, and measures to guarantee that there is no recurrence of the violations, always bearing in mind the circumstances of each case.[17] Given the lack of a prompt and impartial investigation despite the complainant's numerous claims that he was tortured, and despite marks showing on his face during his appearances in court, in particular on 4 July 2005, the Committee finds that the State party is also in breach of its obligations under article 14 of the Convention.

11.9 The Committee also takes note of the complainant's allegation that statements and confessions obtained under torture remained in his case file and served as the basis for his conviction. The Committee recalls that, in its concluding observations, it stated that it remained concerned about the lack of any provision in the State party's legislation clearly specifying that any statement that is proved to have been obtained under torture may not be cited as evidence in any proceedings.[18] In light of the information submitted by the complainant, as substantiated by information available to the Committee at the time of adoption of its concluding observations, the Committee finds a violation of article 15 of the Convention.

11.10 With regard to the procedure established in article 22, the Committee notes that, by a letter of 15 December 2010, the complainant informed the Committee that he wished to withdraw his complaint; that another letter from the complainant, of 21 October 2010, seems to have been sent to his counsel; that the two letters give different reasons for

[15] Ibid.

[16] Communication No. 269/2005, *Ali Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.7.

[17] Ibid., para. 16.8.

[18] CAT/C/DZA/CO/3, para. 18.

withdrawing the complaint; and that, on 31 March 2011, the complainant finally decided to proceed with his complaint before the Committee. The Committee cannot help but take note of the mysterious circumstances surrounding the complainant's requests to withdraw his complaint, followed by his request to resume the procedure, and the State party's lack of cooperation regarding the submission of observations on the admissibility and merits of the case. The Committee reaffirms that, within the framework of the procedure for individual communications set out in article 22, the State party is called on to cooperate with the Committee in all good faith and to refrain from taking any action that might constitute a hindrance. The Committee wishes to remind the State party of its obligations under article 22, and regrets that its correspondence was limited to requests for confirmation as to whether the complainant had withdrawn his complaint, and therefore shed no light on the violations suffered by the complainant.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, finds that the facts before it discloses a violation of articles 1; 2 (para. 1), read in conjunction with article 1; 11; 12, read alone and in conjunction with articles 6 and 7; 13; 14; and 15 of the Convention.

13. Pursuant to rule 118, paragraph 5, of its rules of procedure (CAT/C/3/Rev.6), the Committee urges the State party to conduct an impartial investigation into the incidents in question, with a view to bringing to justice those responsible for the complainant's treatment, and to inform it, within 90 days of the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above, including compensation for the complainant.

[Adopted in English, French, Spanish and Russian, the French text being the original version. Subsequently to be issued in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]